

Portable Audio/Video Recorders

423.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties (Minn. Stat. § 626.8473). Portable audio/video recording devices include all recording systems whether body-worn, handheld or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews or interrogations conducted at any West St. Paul Police Department facility, undercover operations, wiretaps or eavesdropping (concealed listening devices) unless captured by a portable recording system.

The Chief or Chief's designee may supersede this policy by providing specific instructions for body worn camera use to individual officers, or providing specific instructions pertaining to particular events or classes of events, including but not limited to political rallies and demonstrations. The Chief or designee may also provide specific instructions or standard operating procedures for body worn camera use to officers assigned to specialized details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities.

This policy shall be reviewed at least annually, including evaluation of the overall body worn camera program to ensure it meets departmental expectations.

423.1.1 DEFINITIONS

Definitions related to this policy include:

Portable recording system - A device worn by a member that is capable of both video and audio recording of the member's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and as provided in Minn. Stat. § 13.825.

423.2 POLICY

The West St. Paul Police Department may provide members with access to portable recorders after completing departmental approved training, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

423.3 MEMBER PRIVACY EXPECTATION

All recordings made by members on any department-issued device at any time or while acting in an official capacity of this department, regardless of ownership of the device, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

423.4 MEMBER RESPONSIBILITIES

Prior to going into service for both scheduled shifts and off-duty details, each uniformed member will be responsible for making sure that he/she is equipped with a portable audio video recorder

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issued by the Department, and that the recorder is in good working order (Minn. Stat. § 13.825). If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable (Minn. Stat. § 626.8473).

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Additionally, any member assigned to a non-uniformed position shall carry an approved body worn portable audio video recorder when conducting a pre-planned activity that may become adversarial including but not limited to executing search warrants, making arrests or any other activities that may result in enforcement actions by the member. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

When using a portable recorder, the assigned member shall record his/her name, employee number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording (Minn. Stat. § 626.8473). Members should include the reason for deactivation.

Members should not mute their portable recorder while in use. If an officer does mute a recording based on the circumstance, the officer should document the reason in a report or other official record.

423.5 ACTIVATION OF THE AUDIO/VIDEO RECORDER

This policy is not intended to describe every possible situation in which the recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify the Communications Center

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- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording. If an individual(s) ask if they are being recorded, members will state they are being recorded or not recorded if this policy allows for the cessation of a recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

423.5.1 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident. Officers should use their portable recorders to record their transportation and physical transfer of persons in their custody to hospitals, detox, juvenile detention centers, jails, and other placement centers.

423.5.2 SURREPTITIOUS RECORDINGS

Minnesota law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Minn. Stat. § 626A.02).

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

423.5.3 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

423.6 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

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Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty and shall only use a portable recording system issued and maintained by the department in documenting the officer's activities..

Recordings shall not be used by any member for the purpose of embarrassment or ridicule.

Any member who may have questions regarding the application of this policy is encouraged to seek clarification from supervisory personnel.

423.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS

Each officer using a recorder is responsible for transferring or assuring the proper transfer of the data from their recorder to Evidence.com by the end of the officer's shift. If the officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great body harm, a supervisor shall take custody of the officer's recorder and assume responsibility for transferring the data from it. To assist with identifying and preserving data and recordings, members should download, tag or mark the recordings in accordance with the procedure set forth by the manufacture of the recorder and document the existence of the recording in any related case report or other official record.

A member should transfer, tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an under-cover officer or confidential informant.
- (g) The recording or portions of the recording may be protected under the Minnesota Data Practices Act.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

To ensure recordings are retained in accordance with the department's retention schedule, members shall classify recordings made on their portable recorders. The following classifications

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have been adopted by the department and their descriptions should be used to give officers guidance when selecting the appropriate classification.

- (a) **Accidental / Testing** - Used for saving recordings that have no evidentiary value and were recorded due to an accidental activation or testing of the portable recorder. These recordings are retained for 90 days.
- (b) **Case File** - Used for saving recordings that have an associated report or case file. These recordings are generally retained for seven years, but is also based on the department's record retention policy.
- (c) **Citation** - Used for saving recordings that have an associated citation but no case file. An example is a traffic violation citation. These recordings are generally retained for three years, but is also based on the department's record retention policy.
- (d) **Permanent** - Used for saving recordings that are associated with death investigations and criminal sexual conduct crimes. These recordings are retained permanently.
- (e) **Administrative** - Used for saving recordings that have evidentiary value in any administrative investigation. These recordings are retained for five years after the separation of the employee who is the subject of an administrative / internal investigation.
- (f) **Other** - Used for saving recordings that do not meet the requirements of the other categories and there is no value in keeping them beyond the minimum required retention. Examples include citizen contacts, traffic stops not resulting in a citation, alarm response, medical calls, and recordings obtained during training activities. These recordings are retained for 90 days.

423.7.1 RETENTION REQUIREMENTS

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 90 days.

423.8 REVIEW OF RECORDED MEDIA FILES

Officers may access and view stored video only when there is a business need for doing so.

Officers should notate the reason for viewing a particular recording in the "notes" section of evidence.com. When preparing written reports, members should review their recordings as a resource (See the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

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- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) In compliance with the Minnesota Data Practices Act request, if permitted or required by the Act, including pursuant to Minn. Stat. § 13.82, Subd. 15, and in accordance with the Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (See the Records Maintenance and Release Policy). Recordings that are clearly offensive to common sensibilities should not be publicly released unless disclosure is required by law or order of the court (Minn. Stat. § 13.82, Subd. 7; Minn. Stat. § 13.825, Subd. 2).

423.9 COORDINATOR

The Chief of Police or the authorized designee should designate a coordinator responsible for (Minn. Stat. § 626.8473; Minn. Stat. § 13.825):

- (a) Establishing procedures for the security, storage and maintenance of data and recordings.
 - 1. The coordinator should work with the Custodian of Records and the member assigned to coordinate the use, access and release of protected information to ensure that procedures comply with requirements of the Minnesota Government Data Practices Act (MGDPA) and other applicable laws (Minn. Stat. § 13.01 et seq.) (See the Protected Information and the Records Maintenance and Release policies).
- (b) Establishing procedures for accessing data and recordings.
 - 1. These procedures should include the process to obtain written authorization for access to non-public data by WSPPD members and members of other governmental entities and agencies.
- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging or marking events.
- (e) Establishing an inventory of portable recorders including:
 - 1. Total number of devices owned or maintained by the West St. Paul Police Department.
 - 2. Daily record of the total number deployed and used by members and, if applicable, the precinct or district in which the devices were used.
 - 3. Total amount of recorded audio and video data collected by the devices and maintained by the West St. Paul Police Department.
- (f) Preparing the biennial audit required by Minn. Stat. § 13.825, Subd. 9.

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- (g) Notifying the Bureau of Criminal Apprehension (BCA) in a timely manner when new equipment is obtained by the West St. Paul Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders.

423.10 PROHIBITED USE OF AUDIO/VIDEO RECORDERS

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty.

Recordings shall not be used by any member for the purpose of embarrassment, harassment or ridicule.

423.10 RETENTION OF RECORDINGS

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 90 days.

If an individual captured in a recording submits a written request, the recording may be retained for additional time period. The coordinator should be responsible for notifying the individual prior to destruction of the recording (Minn. Stat. § 13.825).

423.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.

423.10.2 ACCESS TO RECORDINGS

Except as provided by Minn. Stat. § 13.825, Subd. 2, audio/video recordings are considered private or nonpublic data.

Any person captured in a recording may have access to the recording. If the individual requests a copy of the recording and does not have the consent of other non-law enforcement individuals captured on the recording, the identity of those individuals must be blurred or obscured sufficiently to render the subject unidentifiable prior to release. The identity of on-duty peace officers may not be obscured unless their identity is protected under Minn. Stat. § 13.82, Subd. 17.

423.12 ACCOUNTABILITY

Any member who accesses or releases recordings without authorization may be subject to discipline (See the Standards of Conduct and the Protected Information policies) (Minn. Stat. § 626.8473).

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423.13 DATA SECURITY SAFEGUARDS

West Saint Paul IT Department shall ensure that the appropriate security controls are in place for any on-premise BWC Systems (see CJIS 5.9 Policy, or future versions, for guidance on minimum basic controls).

West St Paul IT Department shall be responsible for the Backup of any BWC Systems if the system is on-premises and shall provide training to members for the secure storage of portable recording system data and the creation of backup copies of the data.

The West St Paul Police Department in conjunction of the West St Paul IT Department shall ensure that the cloud provider of any BWC System shall be CJIS compliant and have backups of their data available.